



ARKANSAS JUDICIARY

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## Rule 19. Joinder Of Persons Needed For Just Adjudication.

(a) **Persons to Be Joined If Feasible.** A person who is subject to service of process shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or, (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter, impair or impede his ability to protect that interest, or, (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations by reason of his claimed interest. If he has not been joined, the court shall order that he be made a party. If he should join as a plaintiff, but refuses to do so, he may be made a defendant; or, in a proper case, an involuntary plaintiff.

(b) **Determination by Court Whenever Joinder Not Feasible.** If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: (1) to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; (2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; (3) whether a judgment rendered in the person's absence will be adequate; (4) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) **Exception of Class Actions.** This rule is subject to the provisions of Rule 23.

Reporter's Notes to Rule 19: - 1. Rule 19 deals with compulsory joinder of parties. With the exception of the omission of the last sentence of FRCP 19(a), this rule is the same as its federal counterpart. It is believed that the omitted sentence dealing with venue is unnecessary under state practice. Section 19(a) requires the person joined to be subject to service of process; therefore, the fact that such person could otherwise object to venue is of no consequence where existing defendants are properly before the court. This is the effect of Ark. Stat. Ann. 27-615 (Repl. 1962) which remains unaffected by these rules.

2. Section 19(a) concerns itself with the question of who is a "necessary" party while 19(b) deals with whether a necessary party is an indispensable party. *Wright v. First National Bank*, 483 F.2d 73 (C.C.A. 10th, 1973); *Charon v. Meaux*, 60 F.R.D. 107 (D.C. N.Y., 1973). The policy behind FRCP 19 is to avoid dismissal of actions where possible and when it is possible to join an absent party, dismissal is not proper as such party will be ordered to enter the action as a defendant or plaintiff.

3. Superseded Ark. Stat. Ann. 27-808 (Repl. 1962) provided that parties who were united in

interest must be joined as plaintiffs or defendants. Superseded Ark. Stat. Ann. 27-814 (Repl. 1962) provided that where a controversy could not be resolved without prejudice to others or by preserving their rights, then the other parties had to be brought in as parties. This rule, following FRCP 19, abolishes the rigid distinctions between necessary and indispensable parties and instead places the emphasis upon the practical effects a judgment might have upon an absent party.

4. Section (c) of FRCP 19 is omitted from this rule. If there are questions as to defects in parties plaintiff, it is the Committee's view that this is more appropriately an issue which should be raised by a defendant under Rule 12(b).

5. The exception of class actions in 19(c) is for obvious reasons. Rule 23 suggests that absent class members can never be considered indispensable and it is doubtful that they can be considered necessary parties. *Watson v. Branch County Bank*, 380 F. Supp. 945 (D.C. Mich., 1974).

**Associated Court Rules:**

Rules of Civil Procedure

**Group Title:**

IV. Parties

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